

§ 1012.2

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by § 1012.11.

(d) This part does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Presidio Trust FOIA and Privacy Act regulations are found at parts 1007 and 1008 of this chapter.

(e) Nothing in this part is intended to impede the appropriate disclosure under applicable laws of Presidio Trust information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This part only provides guidance for the internal operations of the Presidio Trust, and neither creates nor is intended to create any enforceable right or benefit against the United States or the Presidio Trust.

§ 1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

(a) Except for proceedings covered by § 1012.1(c) and (d), it is the Presidio Trust's general policy not to allow its employees to testify or to produce Presidio Trust records either upon request or by subpoena. However, if the party seeking such testimony or records requests in writing, the Presidio Trust will consider whether to allow testimony or production of records under this part. The Presidio Trust's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Presidio Trust employee may testify or produce records in any proceeding to which this part applies unless authorized by the Presidio Trust under §§ 1012.1 through 1012.11. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

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RESPONSIBILITIES OF REQUESTERS

§ 1012.3 How can I obtain employee testimony or Presidio Trust records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a “*Touhy* Request;” see § 1012.5 and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a valid check for costs to the Presidio Trust, in accordance with § 1012.6, if your *Touhy* Request is granted.

(b) To obtain official Presidio Trust records, you must submit:

(1) A *Touhy* Request; and

(2) A statement that you agree to pay the costs of search and/or duplication in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this chapter, if your *Touhy* Request is granted.

(c) You must send your *Touhy* Request to both:

(1) The employee; and

(2) The General Counsel of the Presidio Trust.

(d) The address of Presidio Trust employees and the General Counsel is: Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

§ 1012.4 If I serve a subpoena duces tecum, must I also submit a Touhy request?

Yes. If you serve a subpoena for employee testimony or if you serve a subpoena duces tecum for records in the possession of the Presidio Trust, you also must submit a *Touhy* Request.

§ 1012.5 What information must I put in my Touhy Request?

Your *Touhy* Request must:

(a) Identify the employee or record;

(b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;

(c) Identify the parties to your proceeding and any known relationships they have with the Presidio Trust or to its mission or programs;

(d) Show that the desired testimony or records are not reasonably available from any other source;

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(e) Show that no record could be provided and used in lieu of employee testimony;

(f) Provide the substance of the testimony expected of the employee; and

(g) Explain why you believe your *Touhy* Request meets the criteria specified in § 1012.9.

§ 1012.6 How much will I be charged?

We will charge you the costs, including travel expenses, for employees to testify under the relevant substantive and procedural laws and regulations. You must pay costs for record production in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this chapter. Estimated Costs must be paid in advance by check or money order payable to the Presidio Trust. Upon determination of the precise costs, the Presidio Trust will either reimburse you for any overpayment, or charge you for any underpayment, which charges must be paid within 10 business days by check or money order payable to the Presidio Trust.

§ 1012.7 Can I get an authenticated copy of a Presidio Trust record?

Yes. We may provide an authenticated copy of a Presidio Trust record, for purposes of admissibility under Federal, State or Tribal law. We will do this only if the record has been officially released or would otherwise be released under parts 1007 or 1008 of this chapter, or this part.

RESPONSIBILITIES OF THE PRESIDIO TRUST

§ 1012.8 How will the Presidio Trust process my *Touhy* Request?

(a) The Executive Director will decide whether to grant or deny your *Touhy* Request. The Presidio Trust's General Counsel, or his or her agent, may negotiate with you or your attorney to refine or limit both the timing and content of your *Touhy* Request. When necessary, the General Counsel also will coordinate with the Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(b) We will limit the Presidio Trust's decision to allow employee testimony to the scope of your *Touhy* Request.

(c) If you fail to follow the requirements of this part, we will not allow the testimony or produce the records.

(d) If your *Touhy* Request is complete, we will consider the request under § 1012.9.

§ 1012.9 What criteria will the Presidio Trust consider in responding to my *Touhy* Request?

In deciding whether to grant your *Touhy* Request, the Executive Director will consider:

(a) Your ability to obtain the testimony or records from another source;

(b) The appropriateness of the employee testimony and record production under the relevant regulations of procedure and substantive law, including the FOIA or the Privacy Act; and

(c) The Presidio Trust's ability to:

(1) Conduct its official business unimpeded;

(2) Maintain impartiality in conducting its business;

(3) Minimize the possibility that the Presidio Trust will become involved in issues that are not related to its mission or programs;

(4) Avoid spending public employees' time for private purposes;

(5) Avoid any negative cumulative effect of granting similar requests;

(6) Ensure that privileged or protected matters remain confidential; and

(7) Avoid undue burden on the Presidio Trust.

RESPONSIBILITIES OF EMPLOYEES

§ 1012.10 What must I, as an employee, do upon receiving a request?

(a) If you receive a request or subpoena that does not include a *Touhy* Request, you must immediately notify your supervisor and the Presidio Trust's General Counsel for assistance in issuing the proper response.

(b) If you receive a *Touhy* Request, you must promptly notify your supervisor and forward the request to the General Counsel. After consulting with the General Counsel, the Executive Director will decide whether to grant the *Touhy* Request under § 1012.9.